

§ 300.152

(2) Appropriate future provision of services for all children with disabilities.

(Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)

(Authority: 20 U.S.C. 1221e-3)

§ 300.152 Minimum State complaint procedures.

(a) *Time limit; minimum procedures.* Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to—

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA's final decision.

(b) *Time extension; final decision; implementation.* The SEA's procedures described in paragraph (a) of this section also must—

(1) Permit an extension of the time limit under paragraph (a) of this section only if—

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the

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public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and

(2) Include procedures for effective implementation of the SEA's final decision, if needed, including—

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) *Complaints filed under this section and due process hearings under § 300.507 and §§ 300.530 through 300.532.* (1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

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(Authority: 20 U.S.C. 1221e-3)

§ 300.153 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.

(b) The complaint must include—

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child—

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

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(Authority: 20 U.S.C. 1221e-3)

METHODS OF ENSURING SERVICES

§ 300.154 Methods of ensuring services.

(a) *Establishing responsibility for services.* The Chief Executive Officer of a State or designee of that officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in paragraph (b) of this section and the SEA, in order to ensure that all services described in paragraph (b)(1) of this section that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph (a)(3) of this section. The agreement or mechanism must include the following:

(1) An identification of, or a method for defining, the financial responsi-

bility of each agency for providing services described in paragraph (b)(1) of this section to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in paragraph (b) of this section, including the State Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the State agency responsible for developing the child's IEP).

(2) The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

(3) Procedures for resolving interagency disputes (including procedures under which LEAs may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(4) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph (b)(1) of this section.

(b) *Obligation of noneducational public agencies.* (1)(i) If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to paragraph (a) of this section, to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in §300.5 relating to assistive technology devices, §300.6 relating to assistive technology services, §300.34 relating to related services, §300.41 relating to supplementary aids and services, and §300.42 relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the State, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to paragraph (a) of this section or an agreement pursuant to paragraph (c) of this section.

(ii) A noneducational public agency described in paragraph (b)(1)(i) of this section may not disqualify an eligible